The Builder.

No. CCCCLXXXVII.

SATURDAY, JUNE 5, 1852.

THE proposed compulsory enfranchisement of COPYHOLDS is a matter which greatly concerns all our readers, and indeed, as it seems to us, the whole community. No one denies the unsuitableness of copyhold tenure to the present state of society: all acknowledge the injurious effects of the copyhold laws, the powers of oppression which they give, the costly litigation and ruin which they often involve. So long ago as 1838, a committee of the House of Commons recommended the compulsory enfranchisement of copyholds, and yet here is 1852 and nothing has been done; and what is more, unless an effort be made out of doors nothing will be done, so powerful is the influence of stewards and other individuals personally interested in the maintenance of an evil system. We do not write on the present occasion to enlighten those who know nothing of the origin and nature of the tenure, but rather to induce those who do to aid in the endeavour, *at this moment being made*, to obtain an improved law: nevertheless, a brief reference to its rise may be useful.

Copyhold, in law, is a species of *customary estate*, said to be held by copy of court-roll; *i. e.* where the tenant's title is evidenced by a copy of the rolls of a manor made by the steward of a lord's court. "Customary estates," says Brande's *Dictionary of Science*, "are those which exist in real property, subject to the custom of manors; and their peculiar characteristic is, that all alienations of them must be transacted in part, at least, in the lord's court; the ordinary mode of alienations being by surrender to the lord and admittance of the new tenant. The peculiar tenure, called copyhold, is derived from the tenure in *villain socage*, as it was termed, held formerly under a manor. This was in its origin a mere permissive tenure by serfs attached to the soil; and copyhold estates are still expressed, in legal phraseology, to be held 'at the will of the lord by the custom of the manor.'"

The fact was this: the king granted to a Chief jurisdiction over a certain extent of land, on condition of his performing certain services and making such payments as were stipulated. This was a *manor*, from the French *manoir*, a mansion-house; derived from the Latin *maneo*, to dwell, or remain; and the lord of it afterwards again divided it, giving to one a part on condition of his ploughing, say, ten acres of land; to another, with the condition that he should cart all his manure; and to a third, with a stipulation that he should go with him to war. Under these the *villeins*, now the copyholders, held according to other conditions, and these holdings have, by lapse of time, as well as custom, become confirmed rights. This feudal system, although not completed till the arrival of the Normans, existed even earlier amongst us, but into this we need not enter. The lords soon began to define closely their obligations to the crown, as, for example, in the interview between king Edward I. and the earls of Hereford and Norfolk, who, when the king ordered them to go with his army to Guienne, replied "that the tenure of their lands did not oblige them to go, unless his Majesty also went." The king then insisted on their going, by saying to Hereford, "By God, Sir Earl, you shall either go or hang;" when he replied, "By God, Sir King, I will neither go nor hang:" neither did he go if history is to be believed.* They continually obtained mitigations of their obligations, and ultimately by an Act in the reign of Charles II. they were absolved from those that remained, but expressly retained for themselves all the fines and obligations of the copyholders; and they gave the king in return, being wise in their generation, a tax upon beer and liquors made for sale, which fell of course principally on the middle and working classes. Clever barons! Innocent people!

We do not wish it should be inferred from this, however, that the present lords of manors hold their rights unjustly, and so should lose them: admitting there be injustice, those who have now long held them did not commit it. What is desired is, that these rights should be made certain and commutable.

Numerous petitions for enfranchisement have been presented to the House of Commons, and we have before us copies of those from inhabitants of Brighton; Dorking; St. Mary's, Newington; St. Pancras; St. Mary's, Islington; Finsbury; and last, though certainly not least, from builders, timber merchants, and others "interested in the erection of houses in the metropolis and its neighbourhood, and in the safety of the capital invested therein or thereupon."

The petitioners from Brighton show that in some of the manors the fines are small and certain, and the profits of the lords are merely nominal; but the uncertainties, extra expense, and inconveniences occasioned by the peculiarities of the tenures, are even in these manors very vexatious; and in manors in which there are fines uncertain or arbitrable according to the improved value of the land, there is an unwholesome restraint upon the employment of labour and capital for the erection of buildings amounting to a prohibition. Even in the case of mere agricultural lands, the absurd retention of the copyhold laws for centuries after the circumstances and objects under which they originated have altered or ceased, involves many serious evils to the community: the complexity and uncertainty of laws lead to much trouble and costly litigation: the copyholder is subject to a most impolitic restraint in the improvement of his lands, and is exposed to the hazard of the loss of his estate under the unjust and unequal law of forfeiture, even for acts tending to the lord's advantage as well as his own. But in the case of lands in the neighbourhood of large towns, copyholders are in many cases absolutely deprived of large incomes, from their inability to use their land for building purposes, and the immediate neighbourhood is deprived of the advantages that would result from the employment of labour and capital on sites most suitable for buildings.

The advantages derived by the community, as well as the copyholder, from the application of land to building purposes are very great: not only are the wants of the people met as to more salubrious or convenient dwellings and roads, but the employment of capital and labour is exercised to the great increase of the national wealth and prosperity.

The inhabitants of the parishes of St. Pancras and Islington submit four propositions:—

"Firstly. That the abolition of copyhold tenure will be a great public benefit, and is absolutely necessary for the general interests of the state.

Secondly. That such abolition is actually due from the lords of the manors, and will be beneficial to them, on terms of fair compensation.

Thirdly. That such abolition is due to the copyholders upon the principle of equal justice in legislation, which has always been the great and distinguishing feature of our constitution.

Fourthly. That, regard being had to the delay in a general enfranchisement, copyholders should at once be enabled to grant leases of their estates."

And they discuss these very fully and ably. These parishes afford striking instances of the evils attendant upon copyhold tenure: there are within the two parishes at least eight different manors, with all the confusion of boundaries, varieties of descent and tenure, customs, uncertainties, inconveniences, and power of oppression. In these manors, also, grants of road-side waste have been most recklessly made, to the great inconvenience of the public, the deterioration in value of the lands of copyholders and freeholders possessing lands fronting the highways, and even to the prejudice of the lords of adjoining manors. The directors of several railways have been obliged to enfranchise lands held of different manors, and been put to great costs in the necessary investigations relative thereto, and in the deductions of the lords' titles.

The Finsbury petitioners urge that—greatly wanting sites for houses and gardens, in order that they and their families may be relieved from the serious consequences of residing in close and over-crowded neighbourhoods, and yet be within a convenient distance from their place of business,—yet considerable quantities of land lying northward of the borough, are found unattainable for such purposes, on account of their being subject to a body of copyhold laws under which lords of manors, possessing very small interests, are enabled to exercise an unnatural and unwholesome power over the land; and they point out what we have already referred to, namely, that while the lords, in early times, gradually got rid of all the fines and obligations under which they held the land from the sovereign, they have pertinaciously maintained their powers over the copyholders, burthensome and prejudicial as they are to the whole community.

The petition from builders and others, which is signed by Messrs. Thomas Cubitt, Frederick Barlow, M. T. Hooke, &c. points out the difficulty which arises from a considerable quantity of land in the neighbourhood of London being subject to the copyhold laws and customs; and that as the custom of granting leases to builders, and so employing capital in the improvement of land, and to meet the exigencies of the community, did not formerly prevail, there is great uncertainty as to the law relating to that tenure; for, although it has been the law for centuries past that copyhold land is as inheritable, and also at the will of the owner as alienable, as freehold land, on payment of fixed or reasonable fines, yet from want of some

* Quoted in "Enfranchisement of Copyhold Property Considered," by G. A. Dean, architect. 1851. London: Atchley.

To learn more about PDF Compression and OCR visit ThePaperlessOffice.org